Supreme Court, U.S.
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No. 97-1023

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1997

CHAMPION INTERNATIONAL CORPORATION,

Petitioner,

v.

RACHEL T. SMITH, as EXECUTRIX
FOR THE ESTATE OF ROBERT W. SMITH,

Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the Fourth Circuit Court of Appeals correctly reviewed the Respondent's claim for disability benefits due to the undisputed conflict of interest on the part of Champion International Corporation.

PARTIES TO THE PROCEEDINGS BELOW AND DISCLOSURE UNDER SUP. CT.R. 29.6

Rachel T. Smith, Respondent is the wife and executrix of the Estate of Robert W. Smith, who died of a self-inflicted gun wound in November 24, 1996. Robert W. Smith was the plaintiff in the district court.

Champion International Corporation, Petitioner, was the defendant in the district court. Champion International Corporation has no parent company and no subsidiaries which are less than wholly owned.

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RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

STATEMENT OF FACTS

Robert W. Smith ("Smith") had been employed by Champion International Corporation ("Champion") in South Boston, Virginia since 1966. Smith became ill and was initially hospitalized at Duke University Medical Center in December, 1982. Smith's discharge diagnosis was "major affective disorder, depressed type, major depressive episode." Thereafter, William P. Wilson, M.D., a board certified psychiatrist at Duke University Medical Center, recommended that Smith be placed on disability, and he was

placed on disability by Champion on February 16, 1984. Smith was granted Social Security disability benefits in 1984 and received Social Security benefits until his suicide in November, 1996. Smith remained under the care and treatment of William P. Wilson, M.D., from 1983 until his suicide in November, 1996. In order for Smith to qualify for disability benefits, Smith was only required to demonstrate that he was not able to engage in any occupation or business for wage or profit for which he is or may become reasonably qualified by training, education or experience. Dr. Wilson consistently was of the medical belief that Smith met this criteria for disability benefits and remained permanently and totally disabled until his suicide.

In fact, all of Smith's treating physicians supported Smith's diagnosis of disability due to chronic major depression, which is in direct contrast to the opinion issued by Merritt W. Foster, M.D., a psychiatrist hired by Champion to examine Smith.

Dr. Wilson stated in a June 22, 1993 letter to Champion, "As far as I am concerned, Mr. Smith is permanently and totally disabled. His progress is poor and I have not felt that more aggressive therapy is indicated in light of his eleven year history of depression. Dr. Wilson further stated in a June 14, 1993 letter to Champion, "I would like to reiterate that Mr. Smith is permanently and totally disabled. Smith has continued to be despondent, compulsive and unable to concentrate. He cannot complete tasks, and become agitated with the slightest stress or change. He loses control when angered and verbally abuses his wife." In a February 8, 1995 letter to Champion, Dr. Wilson stated, "It is my opinion that the above named patient is and has been permanently and currently is totally disabled. His prognosis

is extremely poor in the light of the worsening of symptoms over the last twelve years. He is incapable of returning to any work compatible with his intellectual and educational credentials."

Smith was seen by Marvin P. Rozear, M.D., a neurologist at Duke University Medical Center on November 24 and December 8, 1993 for an evaluation to determine a possible neurological cause for Smith's memory loss and decline in mental ability due to his depression. Dr. Rozear stated in his report, "I think that his symptoms are coming from depression, and I think this is obviously an extremely complex situation. I think the patient is severely depressed and is having problems with his memory related to difficulty in concentrating and focusing.

On June 20, 1989, William L. Floyd, M.D. of Duke University Hospital, determined that Smith was suffering from hypertension, hypertensive heart disease and chronic depression.

In July, 1993, Smith was hospitalized at Charter Hospital in Greensboro, North Carolina due to suicidal thoughts and severe depression. The psychological testing by Aaron H. Stewart, M.A., confirmed that Smith's symptoms indicated a major affective depressive disorder and that he had limited intellectual and emotional resources to manage daily stress. Dr. Stewart noted in his report, "His scores represent a person who is characterized by depression, social introversion, persecutory themes, and mental confusion.

Patrick Logue, M.D., of Duke University Medical Center examined Smith on November 21, 1995 and administered a number of psychological tests. Dr. Logue's

conclusions based upon the test results were as follows: "He is by observation, by history, and by testing depressed and has apparently remained depressed. The current evaluation shows a 30 point drop in IQ, significant problems with attention, memory, frontal executive functions, and speed of processing. However, at this time, I would concur that the patient is totally disabled for work of any nature. He has been given most of the treatments that can be given for depression, but has not responded. He is by history, by testing, and by observation still severely depressed."

In January, 1995, Vocational and Medical Consultants, Inc. conducted a lengthy interview and vocational evaluation of Smith. Its report dated February 20, 1995 stated that Smith was not employable at the present time and had not been employable for a number of years due to his medical condition.

STATEMENT OF THE CASE AND MATERIAL PROCEEDINGS

In its Petition for Writ of Certiorari, Champion erroneously asserts that the decision in Smith somehow conflicts with certain other circuit court of appeals decisions regarding the appropriate standard of review to be applied in cases where the Plan is self-funded and controlled by the Employer who also serves as the Plan Administrator..

Champion claims that the Fourth Circuit's decision by a unanimous panel composed of Judges Russell, Hall, and Michael, failed to focus solely on the evidence Champion produced which claims to support the decision to deny Smith his disability benefits until his untimely death due to suicide. The Fourth Circuit in its unpublished opinion, did not state

that it was reviewing Smith's benefit claim under a de novo standard, but only ruled that it was reviewing Champion's denial under a "modified" abuse of discretion standard which considered Champion's conflict of interest. The Fourth Circuit was convinced that the evidence adduced by Champion failed to "sufficiently controvert the twelve years of medical observation, testing and treatment administered by Smith's treating physicians, who repeatedly concluded that Smith suffered from severe and chronic depression from 1984 and until his suicide in November 1996." (Petitioner's App. 20a).

In its decision, the Appeals Court fairly reviewed all the medical evidence both favorable and unfavorable to Smith and correctly gave appropriate weight to the overwhelming medical evidence from Smith's treating physicians that supported Smith's disability due to his chronic depression and psychotic thinking. Furthermore, much of the evidence adduced by Champion to support its denial was obtained by Champion only after the District Court ruled that Champion had been engaging in substantial procedural abuses in its claim procedure and did not afford Smith proper statutory due process in its claim denial process.

The Appeals Court found that the medical evidence substantiating Smith's disability was "overwhelming." This holding certainly confirms that the Appeals Court would have found the medical evidence supporting Smith's disability to be "overwhelming" under any standard of review when compared to Champion's anecdotal proof that Smith served on several community boards and had gone on a trip to China with his wife and daughter.

The Fourth Circuit observed that Dr. Wilson, Smith's long-time psychiatrist, had explained that Smith's community and travel activities were simply part of his rehabilitative therapy for any individual suffering from chronic major depression. The diagnosis of Smith's treating physicians that Smith suffered from chronic major depression was fully supported by the neurological testing conducted by Dr. Rozear who subjected Smith to a battery of neurological and psychological testing which confirmed their diagnosis of chronic major depression.

Champion has omitted from its Statement of Facts that the District Court, in its Order dated May 2, 1995, found Champion to have engaged in purposeful violations of ERISA's procedural requirements in failing to provide Smith with a full and fair review of his claim denied and engaged in deceit in failing to advise Smith of the true reasons for the denial of his disability claim.

SUMMARY OF THE ARGUMENT

The medical evidence presented to Champion on behalf of Smith was overwhelming and more than substantiated and validated Smith's disability claim. Smith was clearly eligible for disability benefits afforded under the Long-Term Disability Plan. The Fourth Circuit applied an appropriate standard of review in determining Smith's benefit eligibility.

ARGUMENT

In order for Smith to qualify for disability benefits under the terms of the Champion Long-Term Disability Plan (the "Plan"), Smith was required to demonstrate that he met

the definition of "Total Disability" which is defined under the Plan as "the inability to engage in any occupation or business for wage or profit for which he is or may become reasonably qualified by training, education, or experience." According to the medical records and objective testing submitted to Champion on behalf of Smith by his health care providers, Smith clearly met this criteria under the terms of the Plan.

Champion claims that the Fourth Circuit, by adopting an improper standard of review, failed to focus solely on the sufficiency of the evidence Champion provided to its own employees who were responsible for not only administering the Plan, but also was determining benefit eligibility and appeals of benefit denials. The Fourth Circuit, in its well-reasoned opinion, did not state that it was reviewing Smith's disability claim under a de novo standard, but only held that it was reviewing Champion's decision to deny Smith's disability claim under a modified abuse of discretion standard due to a conflict of interest in the administration of the Plan by Champion and its employees and the payment of benefits from Champion's corporate coffers. The Fourth Circuit was convinced that the evidence adduced by Champion failed to "sufficiently controvert the twelve years of medical observation, testing and treatment administered by Smith's treating physicians, who repeatedly included that Smith suffered from severe and chronic depression from 1984 until his suicide in November 1996. The medical records supporting Smith's disability claim are voluminous and are contained in the Appendix filed with the Fourth Circuit.

The United States District Court's opinion (Petioner's App. 6a) acknowledged that the Fourth Circuit has recognized that conflict of interest exists where the employer is both administrator of the plan and pays for benefits

received by its beneficiaries under the employer's pension and welfare benefit plan. This holding was in accordance with a long line of Fourth Circuit holdings that recognize that a conflict of interest may exist where the employer is both the administrator of the benefit plan and is responsible for reviewing benefit claims made by plan participants:.

> In Bernstein v. CapitalCare, Inc., 70 F.3d 783 (4th Cir. 1995), the court held that a conflict of interest exists where the employer both administers the plan and pays for benefits received by its members. In such circumstances, the Bernstein court held that the appropriate standard of review is a "modified abuse of discretion standard," in which the "court should uphold the plan administrator's decision if the decision was reasonable; and the court should weigh the conflict of interest as a factor in analyzing the reasonableness of the decision. Id. at 788. If Champion denies health benefits to its members, it generally profits by the amount of expenses avoided, and, thus, operates under a conflict of interest. Accordingly, the Bernstein standard applies, and I must consider Champion's financial interest in determining the reasonableness of its decision to deny Smith's benefits. (Petitioner's App. 7a) .

The District Court also acknowledged that the appropriate standard of review is the "modified abuse of discretion" standard which was also adopted by the Fourth Circuit in its decision. Now Champion argues that even the

District Court was in error when it reviewed the administrative record under this "modified abuse of discretion" standard and should have applied a strict "abuse of discretion" standard of review.

The Fourth Circuit fairly reviewed all the medical evidence, both favorable and unfavorable, to Smith and correctly gave appropriate weight to the overwhelming medical evidence from Smith's treating physicians and health care providers that supported Smith's disability due to his mental illness, i.e., major chronic depression and psychotic thinking. Furthermore, much of the evidence adduced by Champion to support its claim was obtained by Champion only after the District Court ruled that Champion had been engaging in substantial procedural abuses in its claim procedure and did not afford Smith proper process in its claim denial process and remanded Smith's claim back to the Plan Administrator for further consideration.

In its unpublished opinion, the Appeals Court found that the medical evidence substantiating Smith's disability was "overwhelming." This holding clearly indicates that the Appeals Court would have found the medical evidence supporting Smith's disability to be "overwhelming" under any standard of review when compared to Champion's anecdotal proof that Smith served on several community boards and had gone on a trip to China with his wife and daughter. The Appellate Court reasoned that Smith's long-time psychiatrist had explained that Smith's community and travel activities were simply part of his rehabilitation therapy and that was appropriate for any individual suffering from chronic major depression. The diagnosis of Smith's treating physicians that Smith suffered from chronic major depression was fully supported by the neurological testing conducted by

Dr. Rozear who subjected Smith to a battery of neurological and psychological testing which confirmed the diagnosis of chronic major depression. Champion's medical "expert" only saw Smith on two (2) occasions after he was hired by Champion to write a medical report favorable to Champion during the course of this contested litigation.

This Court in Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 109 S.Ct. 948, 103 L.Ed. 2d 80 (1989), held that a Court is required to determine the effect of any conflict of interest on the judicial standard of review "if a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighted as a factor in determining whether there is an abuse of discretion." Bruch, supra, 489 U.S. at 115, 109 S.Ct. at 957.

In response to this mandate, the Fourth Circuit in Doe v. Group Hospitalization & Medical Services, 3 F.3d 80 (4th Cir. 1993), held that where the decision of a fiduciary to deny a claim will further the financial interest of the employer of the plan sponsor, that fiduciary is clearly operating under a conflict of interest which precludes differential review.

The Fourth Circuit has consistently held that a modified abuse of discretion standard is appropriate where the employer or insurance company both administer the Plan and stands to benefit from a denial of a benefit claim. In Bedrick v. Travelers Ins. Co., 93 F.2d 149 (4th Cir. 1996), the Court clearly mandated that the District Court review the actions of a fiduciary who has a conflict of interest as if the conflict of interest did not in fact exist:

> A fiduciary with a conflict of interest must act as if he is "free" of such a conflict. Doe, 3 F.3d at 87. "Free" is an absolute. There is no balancing of interest; ERISA commands undivided loyalty to the plan participants.

In Bernstein v. CapitalCare, Inc., 70 F.2d 783 (4th Cir. 1995), the Fourth Circuit ruled that a clear conflict of interest exists where an employer both administers the Plan and also profits from a denial of benefits.

In Bailey v. Blue Cross & Blue Shield of Virginia, 67 F.3d 53 (4th Cir. 1995), cert denied 116 S.Ct. 1043 (1996), the Fourth Circuit found that the conflict of interest was substantial where the fiduciary, like Champion, was the sole beneficiary of the savings based upon the denial of benefits:

> A more thorough exploration might have been necessary had the conflict of interest not been as total as that in this case where Blue Cross stood as the single beneficiary of a substantial sum based on its denial of benefits.

It is significant that this Court had the opportunity to review the conflict of interest issue in the Bailey case in 1996, but refused to grant review.

During the appeal, Champion only argued before the Fourth Circuit that since there was no conflict of interest that a strict abuse of discretion standard must apply. Champion never urged the District Court to adopt any modified standard of review of its decision to deny disability benefits to Smith. However, Champion now argues that the modified abuse of discretion standard adopted by the Fourth Circuit somehow is

tantamount to de novo review. This Court in Bruch, supra recognized that if the plan fiduciary is operating under a conflict of interest, that conflict must be weighed as a factor in determining whether there is an abuse of discretion. It is only common sense for the court to recognize that it must scrutinize the composition of the plan decision makers where the owners of the company retain their own employees to administer their own welfare plans.

The evidence in this particular case overwhelmingly supported Smith's claim for disability from the time his disability benefits were suspended by Champion in July, 1993 until his untimely suicide in November 1996. The Fourth Circuit's rationale in deciding this case simply took into consideration pro and con evidence of disability and its findings that the evidence of disability was overwhelming is supported by the record

CONCLUSION

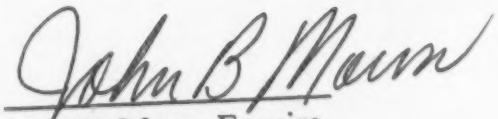
This Court has no reason to grant this writ because the question of a conflict of interest does not impact on the results in this case due to the "overwhelming" medical evidence supporting Smith's diagnosis of chronic major depression which prohibited Smith from being employed and rendered him disabled. The Fourth Circuit properly reviewed the evidence both favorable and unfavorable to Smith's case and determined that the evidence supporting Smith's disability was overwhelming. The Fourth Circuit issued an unpublished opinion which has limited precedential value in this Circuit. When the entire Court reviewed the panel decision upon Champion's Petition for Rehearing and Suggestion for Rehearing En Banc, it also found no reason to alter or change the panel decision.

WHEREFORE, based on the foregoing, I respectfully move this honorable Court to deny Champion's Petition for Writ of Certiorari and uphold the opinion issued by the Fourth Circuit Court of Appeals.

Respectfully submitted,

RACHEL T. SMITH, as
EXECUTRIX FOR THE
ESTATE OF ROBERT W. SMITH

By Counsel



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